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Monroe Custom Utility Bodies, Inc. and Sheet Metal Worker's International Association, Local Union No. 20, a/w Sheet Metal Workers' International Association, AFL-CIO. Case 25-CA-25922

February 8, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX
AND HURTGEN

Upon a charge filed by the Union on March 20, 1998, the General Counsel of the National Labor Relations Board issued a complaint on November 24, 1998, against Monroe Custom Utility Bodies, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. On December 8, 1998, the Respondent filed an answer to the complaint and on June 29, 1998, the Respondent filed an amended answer to the complaint. In its amended answer, the Respondent admitted all material factual allegations and legal conclusions in the complaint, and asserted an affirmative defense concerning backpay.

On July 13, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On July 16, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On July 29, 1999, the Respondent filed a response in which it admitted the allegations in the complaint, agreed that its alternative defense concerning backpay can be properly litigated in compliance, and stated that it did not oppose the General Counsel's motion. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

As noted above, the Respondent, in its amended answer, admitted all material factual allegations in the complaint. Thus, the Respondent admitted the allegations that:

Since on or about September 23, 1997, the Respondent has refused to hire and consider for hire employment applicants Mark Moran and Kurt Tucker. Since on or about October 23, 1997, the Respondent has refused to hire and consider for hire employment applicants Travis Dick and Dennis Wheeler. The Respondent engaged in this conduct because the above-named employment applicants had formed, joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activi-

ties. By this conduct the Respondent has been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees and its applicants for employment, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Since the Respondent agrees that its affirmative defense regarding backpay due the discriminatees can properly be litigated in a compliance proceeding and the Respondent does not oppose the General Counsel's motion, we find there are no material issues of fact or law in dispute and that all material allegations of the complaint are true. We therefore grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, maintained an office and place of business in Cumberland, Indiana. The Respondent has admitted and we find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since on or about September 23, 1997, the Respondent has refused to hire and consider for hire employment applicants Mark Moran and Kurt Tucker. Since on or about October 23, 1997, the Respondent has refused to hire and consider for hire employment applicants Travis Dick and Dennis Wheeler.

The Respondent engaged in the conduct described above because those employees had formed, joined, and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By refusing to hire and consider for hire the individuals named above, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) of the Act. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by refusing to hire and consider to hire Mark Moran, Kurt Tucker, Travis Dick, and Dennis Wheeler,

we shall order the Respondent to offer them immediate employment that they would have had, but for the unlawful discrimination against them, or, if those jobs no longer exist, to substantially equivalent positions, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizon for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful refusal to hire and to consider for hire these individuals, and to notify them in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Monroe Custom Utility Bodies, Inc., Cumberland, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to hire and consider for hire individuals because they formed, joined, or assisted the Union and its constituent members or engaged in concerted activities, or to discourage employees from engaging in these activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Mark Moran, Kurt Tucker, Travis Dick, and Dennis Wheeler immediate employment in the same positions they would have had, but for its unlawful discrimination against them, or, if those jobs no longer exist, to substantially equivalent positions.

(b) Make Mark Moran, Kurt Tucker, Travis Dick, and Dennis Wheeler whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, in the manner set forth in the remedy portion of this decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful refusal to hire and consider for hire these individuals, and within 3 days thereafter notify them in writing that this has been done, and that the unlawful conduct will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Cumberland, Indiana, copies of the attached

notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 23, 1997.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 8, 2000

John C. Truesdale, Chairman

Sarah M. Fox, Member

Peter J. Hurtgen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to hire or consider for hire individuals because they formed, joined, or assisted the Union and its constituent members or engaged in concerted activities, or to discourage employees from engaging in these activities.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Mark Moran, Kurt Tucker, Travis Dick, and Dennis Wheeler immediate employment in the same positions they would have had, but for our unlawful discrimination against them, or if those jobs no longer exist, to substantially equivalent positions.

WE WILL make Mark Moran, Kurt Tucker, Travis Dick, and Dennis Wheeler whole for any loss of earnings

and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to our unlawful refusal to hire or to consider for hire, and within 3 days thereafter notify the foregoing individuals that this has been done.

MONROE CUSTOM UTILITY BODIES, INC.